

BEFORE THE BOARD OF ACUPUNCTURE

STATE OF IDAHO

In the Matter of the License of:)	
)	Case No. ACU-2007-1
RHEA MALONEY,)	
License No. ACU-13,)	STIPULATION AND
)	CONSENT ORDER
Respondent.)	
)	

ACUMaloney\P7110lka

WHEREAS, information has been received by the Idaho State Board of Acupuncture (the "Board") that constitutes sufficient grounds for the initiation of an administrative action against Rhea Maloney ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A. Stipulated Facts and Law

A.1. The Board regulates the practice of acupuncture in the State of Idaho in accordance with title 54, chapter 47, Idaho Code.

A.2. The Board has issued License No. ACU-13 to Respondent. Respondent's license is subject to the provisions of title 54, chapter 47, Idaho Code and the Board's rules at IDAPA 24.17.01, *et seq.*

A.3. Pursuant to Idaho Code § 54-4705(1)(h), the Board has adopted a rule requiring continuing education as a condition of continued licensure. Board Rule 302.01.b (IDAPA 24.17.01.302.01.b) requires each renewal application to be accompanied by certification of having attended and completed a minimum of fifteen (15) hours of acupuncture study or oriental medical theory and techniques within the previous twelve (12) months, as approved by the Board.

A.4. On or about August 28, 2006, Respondent submitted her License Renewal

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Application for the 2006-07 renewal year. As part of her License Renewal Application, Respondent filled out the Verification & Certificate of Compliance showing that she had attended 17 hours of continuing education during the previous year. Respondent also signed the following affidavit:

I hereby certify under penalty of perjury that my response to the above is true and correct and that I have completed 15 hours of continuing education as outlined above and required by the Idaho laws and rules applicable to the practice of acupuncture. I further certify that official certified documentation proving my attendance at the continuing education outlined above is in my possession and may be requested and that failure to submit said proof upon request may result in action against my right to licensure.

A.5. On or about December 6, 2006, Respondent was notified that she had been selected for a continuing education audit. Respondent was requested to provide documentation to the Bureau of Occupational Licenses by January 6, 2007, to confirm completion of fifteen hours of continuing education during the period between September 2, 2005, and September 2, 2006.

A.6. On or about January 3, 2007, Respondent submitted a letter to the Bureau of Occupational Licenses stating that she had no documentation to confirm completion of fifteen hours of continuing education during the period between September 2, 2005, and September 2, 2006.

A.7. Despite certifying on her License Renewal Application on or about August 28, 2006, that she had met the Board's continuing education requirement, Respondent failed to obtain fifteen hours of continuing education during the previous year.

A.8. The allegations of Paragraphs A.4. through A.7., if proven, would violate the laws and rules governing the practice of acupuncture, specifically Idaho Code § 54-4711(2) and Board Rule 302.01.b. Violations of these laws and rules constitute grounds for disciplinary action against Respondent's license to practice acupuncture in the State of Idaho.

B. Waiver of Procedural Rights

I, Rhea Maloney, by affixing my signature hereto, acknowledge that:

B.1. I have read, understand and admit the allegations pending before the Board, as stated in Section A, Paragraphs A.4. through A.7. I further understand that these allegations constitute cause for disciplinary action upon my license to practice acupuncture in the State of Idaho.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of acupuncture in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action upon my license without further process.

C. Stipulated Discipline

C.1. Respondent shall pay to the Board an administrative fine in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) within thirty (30) days of the entry of the Board's Order.

C.2. At the time Respondent renews her license in 2007, Respondent shall submit with her License Renewal Application documentation verifying completion of a minimum of thirty (30) hours of Board-approved continuing education (*i.e.*, a minimum of 15 hours for the 2005-06 renewal year and a minimum of 15 hours for the 2006-07 renewal year).

C.3. At the time Respondent renews her license in 2008 and 2009, Respondent shall submit with her License Renewal Application documentation verifying completion of the required continuing education during each previous 12-month period.

C.4. All costs associated with compliance with the terms of this Stipulation are the sole responsibility of Respondent.

C.5. The violation of any of the terms of this Stipulation by Respondent may warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D. Presentation of Stipulation to Board

D.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2., this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

D.4. Except for Paragraph D.2. which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

E. Violation of Stipulation and Consent Order

E.1. If Respondent violates this Stipulation and Consent Order, the violation shall be considered grounds for additional discipline and the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board to assess whether Respondent has violated this Stipulation and

Consent Order. The Chief shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within twenty-one (21) days after the notice of the hearing and charges is served, Respondent may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

b. At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation and Consent Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

c. At the hearing, the Board may impose additional discipline, which may include the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's practice.

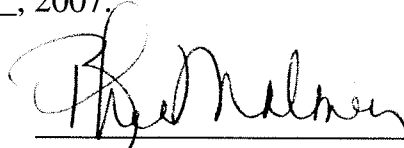
E.2. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If

the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this 26 day of April, 2007.




Rhea Maloney
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 30th day of April, 2007.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

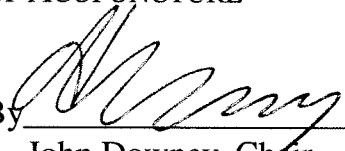
By 

Karl T. Klein
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-4711, the foregoing is adopted as the decision of the Board of Acupuncture in this matter and shall be effective on the 20 day of July, 2007. **IT IS SO ORDERED.**

IDAHO STATE BOARD
OF ACUPUNCTURE

By 

John Downey, Chair

CERTIFICATE OF SERVICE

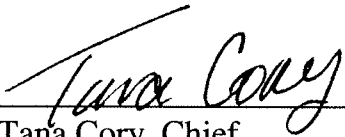
I HEREBY CERTIFY that on this 20th day of July, 2007, I caused to be served a true and correct copy of the foregoing by the following method to:

Rhea Maloney
510 N. Fourth
Sandpoint, ID 83864

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Karl T. Klein
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail



Tana Cory, Chief
Bureau of Occupational Licenses